

## **ALERT: Responding to Automated Request for Employee Information Under Wisconsin's Public Records Law.**

### **BACKGROUND**

Counties across the state are being targeted by public records requests that seek employee information. Although the exact entity seeking the records, as well as the nature and purpose of the request are unknown, many counties are assessing the best approach for responding to the request. This alert provides guidance on the appropriate approach for analyzing and responding to such requests under Wisconsin's Public Records Law (Wis. Stat. §§ 19.31-19.39).

### **THE RECORDS REQUEST**

The request for records has come to many counties seeking (in some variant) the following:

An electronic copy of any and all employees for year of 2017, (fiscal or calendar year). Each employee record should contain the employer name, employer zip code, year of compensation, first name, middle initial, last name, hire date (mm-dd-yyyy), base salary amount, bonus amount, overtime amount, gross annual wages and position title. This data should be broken down by employer, employee and year.

Generally, the requests to counties note that reports titled "Employee Quick with Dollars Report-by Name", "Employee Compensation Report", and "Employee Detail History Report" have been provided by Wisconsin towns and cities, assumptively to provide guidance to counties in responding to the request.

### **ANALYSIS**

The public records law provides access to existing records maintained by an authority, including counties, upon reasonably specific requests. The identity or motive of the requester are irrelevant to a county's obligation to provide access to public records.

Nonetheless, there are limitations on the scope of the public records law and it must be remembered that the law is a "records" law and not an "information" law. For example, the public records law does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester. *Wisconsin Public Records Law Compliance Outline*, Wisconsin Department of Justice (March 2018), p. 21. An authority is further not required to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also George v. Record Custodian*, 169 Wis.2d 573, 579, 485 N.W.2d 460 (Ct.App. 1992). If no responsive record exists, the records custodian should inform the requester.

## RECOMMENDATION

First and foremost, a county should determine if it possesses a readily available record responsive to the request. If a record exists, the county should provide access to the record as soon as practicable and without delay. *See* Wis. Stat. § 19.35(4). Some counties may retain a comprehensive record, such as a spreadsheet or document file, containing most, if not all, of the requested information. In such instances, counties may simply produce the comprehensive document.

Recall that the Public Records Law provides access only to existing records maintained by authorities. Assuming a county does not retain a document which specifically contains the information sought by such a request, a county may either: (1) inform the requester they do not have a record responsive to their request and have no obligation to create such record; or (2) inform the requester they do not have a record responsive to the request and inform the requester that the county is willing to create a spreadsheet for a fee. Because the Public Records Law does not require a county to create a document, any fee a county elects to collect may be set at whatever the county determines is necessary to charge, given that the Public Records Law does not apply to the newly created record.

As with all issues involving the interpretation and application of the public records law, county officials should consult with corporation counsel before responding. Corporation counsel will be able to guide records custodians through the appropriate analysis and, as well, determine what impact any local rules or ordinances may have on the situation.